

REMARKS

The foregoing amendment amends claims 25, 27, 29, 34, 36 and 41 and cancels claims 1-24, 26, 28, 30-33, 35, 37-40 and 43 without prejudice. No new matter is added.

Now pending in the application are claims 25, 27, 29, 34, 36, 41 and 42, of which claims 25, 34 and 41 are independent. The following comments address all stated grounds for rejection and place the presently pending claims, as identified above, in condition for allowance.

Claim Amendments

Independent claim 25 is amended to include the feature of the message being composed on the mobile communications device before being transmitted to the jukebox apparatus and the subject matter of previous claims 26 and 28. The dependent claims 27 and 29 are amended to be consistent with amended claim 25.

Independent claim 34 is amended to include the feature of the message being composed on the mobile communications device before being transmitted to the jukebox apparatus and the subject matter of previous claims 35 and 37. The dependent claim 36 is amended to be consistent with amended claim 34.

Independent claim 41 is amended to include the feature of the message being composed on the mobile communications device before being transmitted to the jukebox apparatus. The dependent claim is 42.

No new matter is added.

Amendment and/or cancellation of the claims is not to be construed as an acquiescence to any of the objections/rejections set forth in the instant Office Action, and was done solely to expedite prosecution of the application. Applicant reserves the right to pursue the claims as originally filed, or similar claims, in this or one or more subsequent patent applications.

35 U.S.C. § 103 REJECTIONS**Claims 1-3, 8, 11, 23-29, 31-41 and 43**

In the Office Action, the Examiner rejects claims 1-3, 8, 11, 23-29, 31-41 and 43 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0194264 to Uchiyama et al. (hereinafter “Uchiyama”) and in view of U.S. Patent Application Publication No. 2002/0032752 to Gold et al. (hereinafter “Gold”). Applicant traverses the rejection and submits that the pending claims distinguish patentably over the cited references.

The above amendment cancels claims 1-3, 8, 11, 23-24, 26, 28, 31-33, 35, 37-40 and 43. Accordingly, Applicant considers the rejection of claims 1-3, 8, 11, 23-24, 26, 28, 31-33, 35, 37-40 and 43 under 35 U.S.C. § 103(a) moot.

Claim 25 is independent and claims 27 and 29 depend therefrom. Claim 34 is independent and claim 36 depends therefrom. Claim 41 is independent and claim 42 depends therefrom.

Applicant respectfully submits that Uchiyama and Gold, alone or in proper combination, fail to disclose or suggest at least the following features of claim 25: “a Short Message Service (SMS) text message is composed by a person in said group of people at the public place using a mobile communications device” and “the composed SMS text message is subsequently transmitted by the mobile communications device,” “the SMS text message comprising (i) an identification code for a track which has been input by the person and (ii) in addition to the identification code, associated alphanumeric text which has been input by the person and which constitutes a message that the person wishes to be displayed at the public place in association with playing of the track,” and “the requested track is played in the public place by the jukebox apparatus, and at the same time the associated alphanumeric text is displayed as a message to said group of people at the public place.”

Applicant claims a system that plays audio and/or video tracks in response to text messages that are “composed using a mobile communications device” and then subsequently “transmitted by the mobile communications device.” In particular, Applicant’s system uses

Short Message Service (SMS) text messages. The Examiner alleges that although Uchiyama does not disclose “sending messages,” Gold teaches “a text message is sent to the electronic song detection ‘jukebox’” and that it would have been obvious to modify Uchiyama’s system with the teaching of Gold. Applicant respectfully disagrees.

Uchiyama discloses a system in which the user “dials the number displayed on the digital display device,” and “the call is routed through the telecommunication device to the central database” connecting to a “distribution server” that “outputs a series of menus, options, etc. to be displayed on the display device via the GUI” (¶ [0032]). Uchiyama further discloses that “the end user makes a selection by interacting with the GUI using the keypad on the telecommunication device used to make the initial call” (¶ [0032]). Gold discloses a system in which the user “points a Web browser at an exemplary dedication Web site” and then interacts with the system to order a dedication song (¶ [0031]).

In both Uchiyama and Gold, the user of the system must connect to a system and interact with the system in order to select an item. In contrast, Applicant claims a system in which the user composes a message indicating the selection of a song without being connected to a system. In particular, claim 25 recites that the message being composed is an SMS text message. SMS text messages are composed on the mobile communications device and do not require that the device be connected to a remote system while the message is being composed. Neither Uchiyama or Gold discloses or suggests that composing the text message indicating the selection of the song can be performed without being connected to the system that receives the message. In addition, Uchiyama and Gold are both silent with respect to the use of SMS text messages. Applicant respectfully submits that telephone key tones, web page form submissions, and email are not equivalent to SMS text messages, and that SMS text messaging is a novel way of interacting with a jukebox system. Therefore, Uchiyama and Gold, alone or in proper combination, do not disclose or suggest “a Short Message Service (SMS) text message is composed by a person in said group of people at the public place using a mobile communications device” and “the composed SMS text message is subsequently transmitted by the mobile communications device,” as recited in claim 25.

Claim 25 also recites that “the SMS text message compris[es] (i) an identification code for a track which has been input by the person and (ii) in addition to the identification code, associated alphanumeric text which has been input by the person and which constitutes a message that the person wishes to be displayed at the public place in association with playing of the track” and “the requested track is played in the public place by the jukebox apparatus, and at the same time the associated alphanumeric text is displayed as a message to said group of people at the public place.” The Examiner acknowledges that Uchiyama does not teach “text input such as [] greetings to be displayed along with the track on the display screen at the site,” but alleges that the teachings of Gold could be combined with Uchiyama to suggest this feature. Applicant respectfully disagrees.

The Examiner alleges that “Gold teaches a text message is sent to the electronic song detection ‘jukebox’ from the mobile communication device with the code of the requested track” (emphasis added). The Examiner did not point to any specific teaching of Gold that discloses or suggests that a message is sent that includes both “an identification code for a track” and “associated alphanumeric text ... to be displayed ... in association with playing of the track,” as recited in claim 25. Thus, Applicant respectfully submits that the Examiner has not made a *prima facie* case for the obviousness of this feature since the Examiner did not identify a teaching from Gold that could be combined with Uchiyama to disclose or suggest this feature because sending a message with the code of the requested track is not equivalent to sending a message with the code and a separate message to be displayed.

With respect to claim 29, Applicant respectfully submits that Uchiyama and Gold, alone or in proper combination, do not disclose or suggest searching a remote jukebox for available tracks via SMS text messaging. As discussed above, SMS text messaging is distinct from telephone interfaces and web page interfaces for numerous reasons, including at least that the user initiates SMS transactions by composing SMS text messages before connecting to the desired system. Since neither Uchiyama nor Gold discloses or suggests such a system, their combined teachings cannot disclose or suggest searching for a desired track via SMS text messaging, as recited in claim 29.

With respect to claim 34, Applicant respectfully submits that Uchiyama and Gold, alone or in proper combination, do not disclose or suggest at least the following features: “a Short Message Service (SMS) text message requesting that a track be played is composed by a person in said group of people at the public place using a mobile communications device” and searching for information about available tracks via SMS text messaging. As discussed above with respect to claim 25, the combined teachings of Uchiyama and Gold do not disclose or suggest interacting with a jukebox via SMS text messaging. Thus, Uchiyama and Gold, alone or in proper combination, do not disclose requesting a song to be played on a jukebox or requesting information about available tracks on a jukebox via SMS text messaging.

With respect to claim 41, Applicant respectfully submits that Uchiyama and Gold, alone or in proper combination, do not disclose or suggest at least the following features: “the person composes search criteria text concerning available tracks on the mobile telephone and the composed search criteria is subsequently transmitted by the mobile telephone over the mobile telephone network” and “a request for the desired track to be played is composed on and transmitted by the mobile telephone over the mobile telephone network.”

Applicant discloses using a mobile telephone on which text messages may be composed and transmitted. On the other hand, Uchiyama discloses that the user uses the keypad to “interact with the GUI” to make a selection and Gold discloses that the user uses a web browser. Applicant respectfully submits that Uchiyama and Gold’s systems are not equivalent to Applicant’s system because they require that the user connects to the system before the search or selection process can be started. In contrast, the user of Applicant’s system composes the search or request text message on the mobile telephone and then subsequently transmits the message to the “jukebox” system.

For at least the reasons set forth above, Uchiyama and Gold, alone or in proper combination, do not disclose or suggest each and every feature of claims 25, 27, 29, 34, 36 and 41.

Accordingly, Applicant respectfully requests the Examiner to reconsider and withdraw the rejection of claims 25, 27, 29, 34, 36 and 41 under 35 U.S.C. §103(a).

Claims 7, 30 and 42

In the Office Action, the Examiner rejects claims 7, 30 and 42 under 35 U.S.C. §103(a) as being unpatentable over Uchiyama and Gold, and in further view of U.S. Patent Application Publication No. 2002/0133562 to Newman et al. (hereinafter “Newman”). Applicant traverses the rejection and submits that the pending claims distinguish patentably over the cited references.

The above amendment cancels claims 7 and 30. Accordingly, Applicant considers the rejection of claims 7 and 30 under 35 U.S.C. § 103(a) moot.

Claim 42 depends from and incorporates each and every feature of claim 41.

As discussed above, with respect to claim 41, Uchiyama and Gold, alone or in proper combination, do not disclose or suggest all of the features of claim 41. Newman does not cure the shortcomings of Uchiyama and Gold with respect to claim 41. For example, Newman also does not disclose or suggest a system in which a user composes a search or request text message on the mobile telephone before being connected to the “jukebox” system and then subsequently transmits the message to the “jukebox” system. Thus, Newman cannot disclose or suggest this feature in dependent claim 42.

For at least the reasons set forth above, Uchiyama, Gold and Newman, alone or in proper combination, do not disclose or suggest each and every feature of claim 42.

Accordingly, Applicant respectfully requests the Examiner to reconsider and withdraw the rejection of claim 42 under 35 U.S.C. §103(a).

CONCLUSION

In view of the above amendment, Applicant believes the pending application is in condition for allowance. If a telephone conversation with Applicant's attorney would help expedite the prosecution of the above-identified application, the Examiner is urged to call the undersigned attorney at (617) 227-7400.

If any additional fee is due with this statement, please charge our Deposit Account No. 12-0080, under Order No. FBU-001, from which the undersigned is authorized to draw.

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Respectfully submitted,

Electronic signature: /David R. Burns/
David R. Burns
Registration No.: 46,590
LAHIVE & COCKFIELD, LLP
One Post Office Square
Boston, Massachusetts 02109-2127
(617) 227-7400
(617) 742-4214 (Fax)
Attorney/Agent For Applicant